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AOR 2007-05

February 14, 2007

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL
2007 FEB 15 P 4:54

Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, NW
Washington, D.C. 20463

Re: Advisory Opinion Request

Dear Mr. Norton:

This letter constitutes a request for an advisory opinion on behalf of Erik Iverson ("Mr. Iverson" or the "Requester"), regarding certain activities that Mr. Iverson plans to undertake, including running for, and if elected, serving as Chairman of the Montana Republican State Central Committee.

Erik Iverson

Erik Iverson is a current resident and native of Montana, having lived there for most of his life. He has been active in Montana politics for several years, and his father was an elected state legislator. He was involved in the recently-held U.S. Senate election there. He was elected as a delegate to the 2004 Republican National Convention, and served on the party's platform committee. Mr. Iverson is well-known in politics throughout Montana. He intends to run for Chairman of his state Republican Party, the Montana Republican State Central Committee. In addition to being an experienced political professional in his own right, Mr. Iverson also currently works in the official office of Congressman Dennis Rehberg.

Montana Republican State Central Committee

The Montana Republican State Central Committee (the "Party") is the state Republican Party in Montana. It maintains both a federal account registered with the Federal Election Commission and a nonfederal account registered with the Montana Secretary of State. Pursuant to Montana State law, it may solicit and accept contributions into its nonfederal account that are prohibited under federal law, including contributions in unlimited amounts from individuals. State law, however, prohibits the Party from accepting corporate contributions. The Party makes contributions and expenditures from its nonfederal account to support state and local Republican candidates in Montana.

The Chairman of the state party is an elected office within the party structure, and has little in the way of direct power over or responsibility for the finances (including the fundraising) of the party. Under party rules, such powers are vested in other elected and appointed officers. According to the Montana Republican State Central Committee's official rules, the Chairman of the Party has the following responsibilities:

The Chairman shall be the recognized leader of the Republican Party organization in Montana and shall have the sole responsibility for the hiring and termination of employment of all paid employees of the State Central Committee, except as provided in Article II. He or she shall preside at all meetings of the State Central Committee, the Executive Committee, and all Republican Conventions, except that he or she may appoint a convention chairman to preside over the business of a convention. He or she shall appoint all committees, except the Executive Committee, and shall be an ex-officio member of all committees. He or she shall represent the State Central Committee in an official capacity and shall have the usual powers of supervision and management as pertaining to the office of a chairman.

Montana Republican Party Rules (www.mtgop.org/rules.asp).

If elected Chairman, Mr. Iverson intends to serve in a manner consistent with the powers vested pursuant to party rule. Mr. Iverson will conduct these activities exclusively on behalf of the Party, and not on the authority of any other person, including Congressman Rehberg.

Legal Framework

The Bipartisan Campaign Reform Act of 2002 ("BCRA") and its implementing regulations generally prohibit federal candidates and officeholders, and agents acting on their behalf, from soliciting, receiving, directing, transferring, or spending "soft money"—that is, funds that exceed the contribution limits of the Federal Election Campaign Act of 1971, as amended (the "Act") or come from sources that are prohibited from making contributions under the Act—in connection with any nonfederal election. 2 U.S.C. § 441i(e); 11 C.F.R. § 300.62.

At the outset, Mr. Iverson's understanding is that in passing BCRA, Congress did not intend to impede the ability of state parties and their officers or agents to raise nonfederal funds solely in connection with nonfederal elections. *See* 2 U.S.C. § 441i(e)(2). He understands, however, that BCRA and its implementing regulations may affect the ability of a state party official who is deemed an "agent" of a federal candidate or officeholder to raise or otherwise control nonfederal funds. *See* 2 U.S.C. § 441i(e).

In light of these provisions and the Federal Election Commission's ("Commission"'s) regulations implementing them, we wish to clarify the permissibility of Mr. Iverson's prospective role as the Party's Chairman (while also working on a Federal officeholder's official staff), and any resulting fundraising or other financial activities in support of the Party, and how the Commission will treat such activities. To these ends, the Requester presents the following issues.

- 1) The Requester asks the Commission to confirm his understanding that he, in his prospective role as Chairman of the Party, may solicit, direct or control nonfederal funds for the Party.

Mr. Iverson would like to confirm his understanding that he is not an "agent" of Congressman Rehberg for purposes of BCRA, and therefore not prohibited from raising, directing or controlling nonfederal funds for the Party, solely because he works on the Congressman's official staff.

An "agent" of a federal candidate or officeholder is a person with actual authority, express or implied, to solicit, receive, direct, transfer, or spend funds in connection with an election. 11 C.F.R. § 300.2(b). To create an agency relationship under BCRA, a federal candidate or officeholder must confer on his agent actual authority to raise or spend funds on the candidate's or officeholder's behalf. *Id.* As the Commission has already decided, this authority may be by express instruction or implied from conduct of the federal candidate or officeholder that reasonably causes the agent to believe he has authority to solicit funds on the candidate or officeholder's behalf.

That Mr. Iverson is a member of Congressman Rehberg's official staff is not sufficient reason to make him an agent under BCRA. First, Mr. Iverson has no express instruction, nor has Congressman Rehberg's conduct caused Mr. Iverson to believe that he is an agent. Second, an agency relationship does not arise between a Member of Congress and his official staff, as the House Committee on Standards of Official Conduct strictly prohibits House staff members, in their official capacities, from engaging in the soliciting or accepting of campaign contributions on behalf of a Member of Congress. Thus, House Ethics preclude any sort of actual or implied authority be bestowed by a Member of Congress upon his official staff, to solicit funds for him or on his behalf.

Third, as the Commission has stated, a federal candidate or officeholder will only be liable for the actions of his agent "when the agent is acting on behalf of the principal, and not when the agent is acting on behalf of other organizations or individuals." *Id.*

(emphasis added). Here, Mr. Iverson's actions as state chair would be undertaken on behalf of the Party, not Congressman Rehberg.

Fourth, the Commission has already addressed this issue in a similar context, in Advisory Opinion 2003-10. There, the Commission ruled that "[i]t is not enough that there is some relationship or contact between the principal and agent; rather, that agent must be acting on behalf of the principal to create potential liability for the principal." As was the case in AO 2003-10, "some relationship or contact" – here, working on a Federal officeholder's official staff – is insufficient to create an agency relationship.

Finally, it appears as though the actions contemplated by Mr. Iverson have already been undertaken by someone similarly situated. For example, the recent chair of the Minnesota Democratic-Farmer-Labor Party simultaneously served as the chief of staff to a Member of Congress from that state (who, incidentally, voted in favor of BCRA). See "Party's Over for Controversial Erlandson," *St. Paul Pioneer Press* (5/14/05) ("Sitting at his desk in Sabo's Capitol Hill office, where he serves as the Minneapolis DFLer's chief of staff three days a week – [the party chairman] doesn't really look like a politician.").

- 2) The Requester asks the Commission to confirm his understanding that, even assuming *arguendo* that Congressman Rehberg had, at some time in the past, conferred actual authority upon Mr. Iverson, or he is somehow otherwise deemed an agent of a Federal officeholder, he is still able to serve as Chairman of the Party if elected.

Mr. Iverson understands that if he, in an un-official, personal capacity, were to carry out some fundraising activity on behalf Congressman Rehberg in some circumstances in the future, Mr. Iverson would be an "agent" of Congressman Rehberg in only those circumstances, and would be free to solicit, receive, direct, transfer, or spend nonfederal funds in other circumstances (namely, in his capacity as Party chair). Mr. Iverson would like the Commission to confirm this understanding.

Moreover, under the Party's rules, the Chairman's power is specific and limited, particularly concerning the finances. On its face, the Party rules do not appear to require the Chairman to "direct" or "control" non-federal funds. Instead, the Chairman's duties are more as an honorary leader of the Party, primarily in charge of its organization and its personnel. Such would include the staffing of the positions of Party "Treasurer" and "Finance Chairman," jobs that focus entirely on the management, control, solicitation and acceptance of all Party funds, both federal and nonfederal. According to the Party's rules, the Treasurer "shall require an accounting, at least monthly, for all receipts and disbursements of the State Central Committee and insure the timely filing of all reports required to be made to any governmental body or agency by the State Central Committee," and the Finance Chairman "shall raise funds for the use of the Republican Party." *Id.*

Again, it appears as others who are similarly situated have already engaged in the sort of conduct contemplated by Mr. Iverson. For example, Congressman Joe Crowley (D-NY) was elected chairman of his local party last year. See "Crowley is New Queens Dem Boss," *Daily News* (9/16/06). As one who voted for BCRA, it is hard to imagine that the law for which Crowley voted would preclude his serving as chair of a local party.¹

Thus, even assuming *arguendo* that Mr. Iverson is an agent of a Federal officeholder, he would like the Commission to confirm that if he is elected Party chair, he would be permitted to serve and not be impermissibly directing or controlling funds beyond the limits or prohibitions of Federal law.

Please do not hesitate to contact me should you have any questions about this request.

Respectfully,

A handwritten signature in black ink, appearing to read "D. McGahn II". The signature is fluid and cursive, with the initials "D" and "II" being particularly prominent.

Donald F. McGahn II
Counsel to Erik Iverson

¹ After all, the definitions of "spend," "receive," "direct," and "solicit," must not be read in an unnaturally broad manner, and require something more than "mere involvement." See *McConnell v. FEC*, 540 U.S. 93 (2003) ("... Justice Kennedy is incorrect that '[a] national party's mere involvement in the strategic planning of fundraising for a state ballot initiative or its assistance in developing a state party's Levin-money fundraising efforts risks a finding that the officers are in 'indirect control' of the state party and subject to criminal penalties.'").



Albert Kiss/FEC/US
03/09/2007 09:34 AM

To Merita Johnson/FEC/US@FEC
cc Duane Pugh/FEC/US@FEC
bcc
Subject Fw: AOR Request -- Erik Iverson

For the file re: pre-AOR 230.

--- Forwarded by Albert Kiss/FEC/US on 03/09/2007 09:33 AM ---



Don McGahn
<donmcgahn@yahoo.com>
03/08/2007 03:34 PM

To dpugh@fec.gov, akiss@fec.gov
cc
Subject AOR Request -- Erik Iverson

Gentlemen:

Attached are the responses to your questions in connection with the advisory request submitted on behalf of Erik Iverson.

Please do not hesitate to contact me with any additional questions or concerns.

Never miss an email again!



Yahoo! Toolbar alerts you the instant new Mail arrives. Check it out. [AOR Iverson followup questions.doc](#)

**Response to Questions Related to Advisory Opinion
Request Filed on Behalf of Erik Iverson**

1. Regarding Mr. Iverson's current employment, what is his title and role?

Mr. Iverson is an employee of the United States House of Representatives, and currently serves as Chief of Staff in Congressman Rehberg's official office. As Chief of Staff, Mr. Iverson manages the day-to-day affairs of the office and the other staff in Congressman Rehberg's official office.

2. What are Mr. Iverson's responsibilities in his role in the official office?

Mr. Iverson's responsibilities include general oversight and management of Congressman Rehberg's four Montana district offices and his Washington, D.C. office, including such things as Congressman Rehberg's schedule, office personnel matters, office budget and the like.

3. How long has Mr. Iverson been employed in his current position (or in the alternative, when did he begin employment in the official office)?

Mr. Iverson has been an employee of the United States House of Representatives since August, 1999. He has worked in Congressman Rehberg's office since January, 2001.

4. Has Mr. Iverson ever worked for the Rehberg campaign?

No. Although he has not worked for the campaign, Mr. Iverson has on occasion attended campaign events on his own time.

5. Has Mr. Iverson (or does he currently) raise or spend campaign money for Congressman Rehberg?

No. The finances (specifically, the spending of funds) of Congressman Rehberg's political operation is controlled by his committee's treasurer. Congressman Rehberg's campaign employs a professional fundraising consultant, who handles the fundraising. In addition, the campaign is managed by a professional campaign manager. Mr. Iverson has not held any of these positions, nor does he have any intention to hold such positions.

6. If elected, will Mr. Iverson continue to work for Congressman Rehberg?

His present intention is to continue to work in the official office of Congressman Rehberg.

7. *If yes, how will his time be divided between his official duties and his role as party chair?*

Mr. Iverson will perform the duties of party chair on his own time, consistent with the applicable rules and standards of the House of Representatives. His activities as Chair will occur after-hours during the week, and on weekends, in Montana.

8. *Are the Montana Party Rules cited in the request the current party rules?*

To the best of Mr. Iverson's knowledge, the rules cited in the request are the current party rules.

9. *Will Mr. Iverson work (or in past, has he worked) in district office or in the Washington, D.C. office?*

Mr. Iverson works in both the Montana district offices and the Washington, D.C. office of Congressman Rehberg.

10. *Will state party work be done in the Montana party office rather than in Washington, D.C.?*

Mr. Iverson anticipates that all party work will be done in the Montana party offices (or at events sponsored by the Montana party). He does not anticipate doing party work in Washington, D.C. Certainly, no political work will be conducted in either the Washington, D.C. official office, or Montana district offices, as House rules preclude such activity. Similarly, and again consistent with House rules, Mr. Iverson will not hold himself out as an employee of the House, Congressman Rehberg, Chief of Staff, or like while conducting party business or in the role of party chair.



Albert Kiss/FEC/US
03/01/2007 05:08 PM

To: Merita Johnson/FEC/US@FEC
cc: Duane Pugh/FEC/US@FEC, Rosie Smith/FEC/US@FEC
bcc:
Subject: Phone Call Memo for Pre-AOR 230, Erik Iverson

I received a call back from Don McGahn at 4:30 PM.

I explained the status of his letter we received on February 15, 2007 as incomplete at present and thus not an AOR until complete.

I communicated our questions:

What is Mr. Iverson's title in his role in the Congressman's official office?

What are Mr. Iverson's the responsibilities in his role in the Congressman's official office?

How long has Mr. Iverson been employed in the office of Congressman Rehberg?

Alternatively, when did Mr. Iverson begin his employment in the office of Congressman Rehberg?

Has Mr. Iverson ever worked for Congressman Rehberg's campaign committee? Does he now? Will he in the future?

Has Mr. Iverson or does Mr. Iverson raise or spend any money for the Congressman's campaign committee?

If elected Chairman of Montana Republican State Central Committee, will Mr. Iverson continue employment with the office of Congressman Rehberg?

If yes, how will Mr. Iverson divide his time between the two?

Will there be a certain number of days per week that Mr. Iverson works as Chairman of the Party?

If yes, how many days per week will Mr. Iverson work in the official office of Congressman Rehberg?

Please confirm that the June 2006 Montana Republican Party Rules cited in the letter and available online at www.mtgop.org/rules.asp are the only applicable party rules.

Has Mr. Iverson in the past, is he now, or will he in the future, be working in Congressman Rehberg's district office or Washington, DC office?

Will Mr. Iverson's state party work be done in Montana at the state party's office rather than in Washington, D.C.?

Mr. McGahn took notes, and stated he does not need these questions in writing.

Mr. McGahn stated that if Mr. Iverson is elected Chairman of Montana Republican State Central Committee, Mr. Iverson will continue employment with the official office of Congressman Rehberg.

Mr. McGahn stated that he will ask how Mr. Iverson plans to split time between official office of Congressman Rehberg and the Montana Republican Party, but any answer to this question may change because a similar query is before the House Ethics Committee at the same time as it is before the FEC.